

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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HARRIET HENNEBERGER,

Plaintiff(s),

**ANSWER & JURY DEMAND**

vs.

Civil Action No.: 07-cv-804

COHEN & SLAMOWITZ, LLP

Defendant(s).

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Defendant, COHEN AND SLAMOWITZ, LLP, by and through its attorneys, Smith, Sovik, Kendrick, and Sugnet, P.C., in answer to plaintiff's complaint, state the following:

1. This paragraph contains plaintiff's characterizations of her claims. No response is required; otherwise **DENIES** the allegations contained in paragraph "1" of plaintiff's complaint.
2. Paragraphs "2", "3" and "4" contain conclusions of law. No response is required; otherwise **DENIES** the allegations contained in paragraph "2", "3", and "4" of plaintiff's complaint.
3. **DENIES KNOWLEDGE AND INFORMATION** sufficient to form a belief as to the allegations contained in paragraphs "5", "7", "8", "12", "13", "16", "17", "18", "19", "20" and "22" of plaintiff's complaint.
4. **ADMITS** the allegations contained in paragraphs "6", "9", "10", and "11" of plaintiff's complaint.
5. **DENIES** the allegations contained in paragraphs "14", "15", "21" and "23" of the plaintiff's complaint.

6. **REPEATS AND REALLEGES** each and every response to the allegations contained in paragraphs "1" through "23" of plaintiffs' complaint with the same force and effect as if repeated herein at length.

7. **DENIES** the allegations contained in paragraphs "25" and "26" of the plaintiff's complaint.

**AS AND FOR A FIRST AFFIRMATIVE DEFENSE**

8. The complaint fails to state a cause of action upon which relief may be granted.

**AS AND FOR A SECOND AFFIRMATIVE DEFENSE**

9. Defendant did not violate, in whole or in part, any provision of the FDCPA.

**AS AND FOR A THIRD AFFIRMATIVE DEFENSE**

10. To the extent that a violation of any provision of 15 U.S.C. 1692 occurred, such violation was not intentional and resulted from a bona fide error notwithstanding reasonable procedure adopted to avoid any such error.

**AS AND FOR A FOURTH AFFIRMATIVE DEFENSE**

11. Plaintiff is precluded by the doctrine of waiver and estoppel.

**AS AND FOR A FIFTH AFFIRMATIVE DEFENSE**

12. Plaintiff has failed to mitigate her damages.

**AS AND FOR A SIXTH AFFIRMATIVE DEFENSE**

13. At all times mentioned and described in plaintiff's complaint, the answering defendant acted in a reasonable manner, with probable cause, in good faith, without notice and

their actions were justified.

**AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE**

14. All state causes of action are barred by federal preemption.

**AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE**

15. No act or failure to act on the part of the defendant was a substantial factor in causing any damage to plaintiff.

**AS AND FOR A NINTH AFFIRMATIVE DEFENSE**

16. Plaintiff's claims are barred by applicable statute of limitations.

**AS AND FOR A TENTH AFFIRMATIVE DEFENSE**

17. Any damages caused or sustained by plaintiff were caused by the acts of a third party over which defendant has no control or is not responsible.

**AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE**

18. Plaintiff's damages must be reduced by her comparative negligence.

**JURY DEMAND**

Demand is made for a jury trial on all issues.

**WHEREFORE**, defendant demands judgment dismissing plaintiff's complaint, together with the costs and disbursements of this action.

DATED: January 10, 2008

SMITH, SOVIK, KENDRICK & SUGNET, P.C.

By: 

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